



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: Texas Service Center

Date: **JAN 14 2003**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in speech and hearing from the University of Mysore in India. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term 'national interest.' Additionally, Congress did not provide a specific definition of 'in the national interest.' The Committee on the Judiciary merely noted in its report to the Senate that the committee had 'focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .' S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking to qualify as 'exceptional.']. The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term 'prospective' is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not contest that the petitioner works in an area of intrinsic merit, speech therapy, and we concur. The director did conclude that the proposed benefits of the petitioner's work, improved speech among the hearing impaired, would be not be national in scope. Specifically, the director found that the primary benefits of the petitioner's work as a therapist would lie with his patients in Georgia.

In support of the initial petition, the petitioner's employer focuses on the benefits the petitioner provides to his own patients. As stated in *Matter of New York State Dept. of Transportation*, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement. *Id.* at 217, note 3. A similar argument can be made for speech therapists. Nevertheless, on appeal, the petitioner reiterates his claim to have developed a new method, closed mouth voicing, for teaching hearing impaired individuals to distinguish between voiced and voiceless consonants. The petitioner asserts that this new technique is more effective than the traditional technique and could impact speech therapy nationwide. The validity of this claim is best considered under the final prong. As the *proposed* benefits of the petitioner's work would be national in scope, we find that the petitioner meets this requirement. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, note 6.

In his own letter in support of the petition, the petitioner relies on his multilingual abilities and his development of the closed mouth voicing technique, asserting that these attributes raise him above the average speech therapist. Savita Sharma, President of Bell Rehab, describes the petitioner's duties for that company, asserting that his ability to speak Spanish is especially useful for Spanish-speaking children referred to the Babies Can't Wait early intervention program. Mr. Sharma does not discuss the closed mouth voicing technique. Linda Wetherbee, a social worker who has observed the petitioner's work, asserts that the petitioner's ability to speak several Indian languages, Spanish, and American Sign Language set him apart from other available speech therapists. Ms. Wetherbee asserts that the petitioner's experience projects future achievements. The work experience she lists reflects that he is experienced, not that he has influenced the field as a whole. Ms. Wetherbee concludes that the petitioner's ability to work with all age groups and his skill cannot be expressed on a labor certification application. Maria Rebecca Belicano, a physical therapist who has worked with the petitioner, provides similar information.

The petitioner also submitted several letters from coworkers, colleagues and patients' relatives. These letters all provide general praise of the petitioner's skills, dedication and academic accomplishments. In response to the director's request for additional documentation, the petitioner submitted more letters from coworkers, his immediate circle of colleagues, and patients' relatives. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

In addition, the petitioner submitted a letter from the Mayor of Ocilla, Georgia, Freeman Jones, chronicling the petitioner's experience and credentials. Mayor Jones does not appear to have any first hand knowledge of the petitioner's purported influence on his field. Two references, Dr. Aparna Balan, another speech pathologist in Georgia, and Y Krishna, a speech pathologist in the United Arab Emirates and former classmate of the petitioner, assert that they have had positive results using the closed mouth voicing technique. That two colleagues of the petitioner who know him personally have used his technique is not evidence that he has influenced the field as a whole with this technique.

The petitioner initially submitted two "research works." One of the petitioner's references, Dr. R.S. Shukla, one of the petitioner's former professors, asserts that the research "is worth publishing." In response to the director's request for additional documentation, the petitioner asserts that "New Therapy Technique for Voiced-Voiceless Distinction of Hearing-Impaired," was published in the

Journal of the All India Institute of Speech and Hearing in 1991. Without evidence that the work was not only published but also widely cited or otherwise influential, the petitioner cannot demonstrate that this research influenced the field as a whole. Moreover, a review of the one page summary of the petitioner's research reveals that he was testing the efficacy of a technique developed by his advisor, Ravi Shankara Shukla.

Finally, the petitioner has not demonstrated that his experience and qualifications can not be enumerated on a labor certification application. While the petitioner submitted an article regarding the lack of speech therapists who speak Asian-Pacific languages, the reference letters in the record do not indicate that the petitioner works with Asian Pacific Americans. Rather, they discuss his work with Spanish speaking infants and toddlers. The director noted that the petitioner has only had limited Spanish education. In addition, while the petitioner submitted an article regarding the benefits of using sign language as part of therapy, the article does not indicate that there is a scarcity of speech therapists trained in sign language, especially at the beginner level attained by the petitioner. Regardless, as implied by the director, language ability can be specified on a labor certification application.

On appeal, the petitioner argues that his studies in India involved audiology courses not offered in speech therapy programs in the United States and submits supporting evidence of this claim. It is not clear that the courses offered in the United States such as phonetics and others involving hearing are not similar to the audiology courses offered in India. Regardless, academic requirements can be enumerated on a labor certification application. Our conclusion on this matter is reinforced by the fact that Bell Soft, Inc. obtained a labor certification on behalf of the petitioner. Labor certification is the basis of an approved visa petition on behalf of the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.